THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2002-0636, In the Matter of Peter P. Mitrano and Virginia L. Mitrano, the court on November 22, 2002, issued the following order:

Notice of appeal is declined. See Rule 7(1).

The notice of appeal and any documents that were filed in this matter were provided to each justice whose name appears below.

Under Supreme Court Rule 7, the supreme court may in its discretion decline to accept an appeal from the superior, district, or probate court or from the family division. No appeal, however, is declined except by unanimous vote of the court with at least three justices participating.

No justice who considered this matter voted to accept this appeal. Accordingly, the appeal was declined. If any justice who considered this matter believed the appeal should have been accepted, this case would have been scheduled for briefing.

Brock, C.J., and Broderick, Nadeau, Dalianis and Duggan, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Clerk, Family Division at Lebanon
2000-M-0193
Susan N. Hankin-Birke, Esquire
Mr. Peter P. Mitrano
Hon. Willard G. Martin
Laura Mitchell, Supreme Court
File

STATE OF NEW HAMPSHIRE

GRAFTON, SS **JUDICIAL BRANCH,**
FAMILY DIVISION OF LEBANON
Docket No. 2000-M-0193

In Re:

PETER PAUL MITRANO

and

VIRGINIA LEE KELLY

ORDER

Upon evidence duly presented to the Court, it is ordered as follows:

1. The Petitioner shall pay child support to Virginia Kelly consistent with the USO attached hereto and made a part hereof.

2. Petitioner shall forward his 2001 tax return to Susan Hankin-Birke, Esq. by November 30, 2002. In the event the return indicates the income in excess of the court's current determination, Virginia Kelly shall be entitled to request a further hearing on the issue of support.

3. In light of this court's prior finding of Mr. Mitrano's bad faith, and the significant

financial discrepancy in the parties' income and assets, the Respondent is awarded her reasonable attorney's fees as of September 1, 2002, spanning litigation in the states of Virginia, Vermont, and New Hampshire, along with those other amounts as set forth on her affidavit of costs and expenses dated September 27, 2002. This sum shall be paid within (90) days of this order.

4. The Respondent is granted an attachment against the Petitioner's real estate located at 6 Stevens Road, Village of Etna, Town of Hanover, County of Grafton, and State of New Hampshire (Tax Map 2, Lot 110), as conveyed to Peter P. Mitrano by instrument dated August 25, 1993 and recorded in the Grafton County Registry of Deeds at Book 2045, Page 214, in the amount of $47,000, pending Virginia Kelly's receipt of all sums due from Peter P. Mitrano under this order.

5. The Respondent, Virginia Kelly, is granted sole physical custody of the three minor children of the parties. Upon written request, Virginia Kelly shall provide copies of medical and/or school information to Peter Mitrano. Peter Mitrano shall not be entitled to receive any such documentation directly from the educational, medical, or dental source.

6. The Respondent, Virginia Kelly, is granted sole physical custody of the three minor children of the parties.

7. Peter Mitrano shall undergo a psychological/custodial evaluation, which includes anger management and parenting issues, and shall follow through with the recommendations of the evaluator. It shall be Peter Mitrano's responsibility to cooperate with the reasonable requests of the GAL in the evaluation with DHPA (Dartmouth-Hitchcock Psychiatric Associates), 1 Medical Center Drive, Lebanon, New Hampshire 03766 (603-650-5855). Peter Mitrano shall bear all costs of the evaluation.

8. Until such time as a qualified New Hampshire mental health professional determines that the Petitioner no longer poses a threat of emotional or physical harm to the children, or a flight risk with the children, no contact between the Petitioner and minor children shall occur. However, the Petitioner may petition the court once a psychological assessment and recommendations of the evaluators have been completed for visitation between the Petitioner, Peter Mitrano, and the children supervised by a New Hampshire mental health professional acceptable to the Respondent, Virginia Kelly, and at the sole expense of Peter Mitrano.

Approved and Ordered

September 27, 2002	/s/
Dated	Presiding Justice

Title 28, United States Code, Section 1738A, also known as the Parental Kidnapping Prevention Act or "PKPA"

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term-

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child; child and his parents, or the child and at least one

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting; is parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived

from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "Physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, or a territory or possession of the

(9) "visitation determination" means a judgment, visitation of a child and includes permanent and temporary orders and initial orders and modification faith and credit in every court within the United

(c) A child custody or visitation determination made by a court of a State is consistent with the such State; and

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State W is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the

commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (I) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B),(C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child, that such court assume jurisdiction;

or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section

continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PETER PAUL MITRANO

Plaintiff/Cross-Defendant

v. In Chancery No. 123690 124672

VIRGINIA LEE KELLY MITRANO

Defendant/Cross-Plaintiff

ORDER

THIS CAUSE came to be heard on the 6th day Of July 1992, upon the cross Motions of Plaintiff and Defendant for entry Of an order granting each of them sole custody of their minor children, and appropriate visitation to the other party. Both parties having been present in court with their counsel.

IT APPEARING TO THE COURT that there were three (3) children born of this marriage, to-wit: CHRISTINA LEE MITRANO, born on the 4th day of October 1985 (6 years); PETER PAUL MITRANO, born on the 27th day of December 1986 (5 years); and CHRISTOPHER LOUIS

MITRANO born on the 21st day of December 1991 (6 months); and

IT FURTHER APPEARING TO THE COURT after hearing testimony of the parties, their witnesses, and upon the argument of counsel, that the following is an appropriate order to be, entered in this cause, it is therefore

ORDERED that Plaintiff, Peter Paul Mitrano, (Peter), and Defendant, Virginia Lee Kelly Mitrano (Virginia), shall have joint physical and legal custody of their minor children, to-wit: CHRISTINA LEE MITRANO, PETER PAUL MITRANO and CHRISTOPHER LOUIS MITRANO, and it is further

ORDERED that the minor children of the parties shall reside primarily with Peter, and the minor children shall be with their mother on each Wednesday from 5:00 p.m. until 8:00 p.m., for dinner, and the first three weekends of each month beginning at 6:00 p.m. on the first Friday of each month continuing until Monday at 9:00 a.m., or when school begins, whichever is most appropriate under the circumstances, [the parties agree to re schedule in the event of changes to the schedule to their satisfaction] and it is further

ORDERED that in addition to the time set forth above, Peter and Virginia shall have the children with them the following times (these times shall supercede the times immediately set forth above in the event of a conflict):

(a) Christmas: Unless Peter takes the children on vacation during the Christmas holiday, which would be for a maximum of one weeks time, the minor children will spend the day of Christmas Eve, Christmas Eve and Christmas morning until 10:00 a.m. with Peter, and from 10:00 a.m. Christmas Day until 10:00 a.m. on New Years Day with Virginia. For the rest of the Christmas break, both before Christmas and after New Years, the minor children will be with Peter; except, the minor child, PETER PAUL MITRANO, shall celebrate his birthday with Peter on the actual day it falls.

(b) Easter and Thanksgiving: The minor children of the parties will be with Virginia on Easter weekend [& Spring Break, unless Peter takes the children on vacation and gives 30 days notice to Virginia of his intention to take the children for the vacation] and they will be with Peter on Thanksgiving and the three days following Thanksgiving.

(c) Mothers and Fathers Day: The minor children of the parties will be spend time with the appropriate parent on the appropriate parent's day.

(d) Birthdays: Two of the minor children of the parties, CHRISTINA LEE MITRANO and CHRISTOPHER LOUIS MITRANO, will celebrate their birthdays in whichever parents home they may be in on the specific date of their birthday. For all three children, the parent with whom they are not with at that particular time, will be invited

to participate in the birthday celebration. In addition, each parent will have the right to be with the children, for an appropriate period of time under the particular circumstances as they exist, on their own particular birthdays.

(e) Summer Vacation: The parties will add the number of days between the end of school and the beginning of the next school year and divide by 2; Virginia shall have the first half of the summer and Peter shall have the second half of the summer. So long as each of the parties remains in the Washington Metropolitan Area during their summer time with the children, the other patty shall have rights to reasonable time to spend with the minor children; and it is further

ORDERED that each party shall have equal access to medical records, consultations with physicians regarding the medical condition of the children, and school records of the minor children of the parties. In the event that either party shall obtain a document pertaining to the medical condition of the children, or school report cards, a copy of that document shall be provided to the other parent; and it is further

ORDERED that each of the parties shall consult with each other with regards to all major decisions made for the benefit of the children. In the event they are unable to agree, then they shall consult with Dr. Jeffrey Schulman, or some other agreed upon third person; and it is further

ORDERED that each of the parties shall participate in a seminar or course consisting primarily of receiving training in the art of mediation, and it is further

ORDERED that in the event the parties cannot reach a consensus on decisions regarding the welfare of the children, then the particular parties' area of responsibility for decision making' shall be as follows: Virginia shall have decision making powers in the areas of recreational and social activities, hobbies (all non-school related) and health. Peter shall have decision making powers in the areas of the minor children's' education and religious upbringing and training.

ENTERED this 4th day of September 1992.

_____/s/_____
ROSEMARIE ANNUNZIATA, JUDGE

Smolen & Plevy P.C.

_____/s/_____
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Vienna, Virginia 22182
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_____/s/_____
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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PETER PAUL MITRANO

Plaintiff/Cross-Defendant

v. In Chancery No.
123690
124672

VIRGINIA LEE KELLY MITRANO

Defendant/Cross-Plaintiff

TRIAL JUDGES' CORRECTED STATEMENT OF FACTS FILED PURSUANT TO RULE 5:11

"Come Now, Henry E. Hudson and Jane Marum Roush, Judges of this Circuit Court, and after review of the Petitioner's WRITTEN STATEMENT IN LIEU OF TRANSCRIPT, certifies as follows:

This case was heard on two occasions by separate judges of this Court on the Petitioner's motions for an emergency child custody hearing. In neither instance did the trial judge conclude that a genuine emergency existed, justifying an immediate hearing without customary notice to the Defendant.

On January 5, 2001, Petitioner presented a "Petition for Emergency Order"' to Judge Henry E. Hudson sitting in chambers. Telephone contact was made with counsel for the Defendant. Upon learning that the children in question had been in the jurisdiction for less than two weeks and that a facially valid custody order issued by a court in New Hampshire was in existence, the court denied the Petitioner's motion. The Petitioner presented no other emergent facts or circumstances, other than that the deadline for returning his children to the Defendant under the New Hampshire order was imminent. In essence, the Petitioner's motion was a request for change of custody. The Court made no decision on the merits of that request.

On January 8, 2001, the Petitioner appeared ex parte before Judge Jane Marum Roush, sitting in chambers, with a similar 'Emergency Petition for Enforcement of the Custody Order.' The petition had been denied earlier that afternoon by Judge Valentine of the Fairfax County Juvenile and Domestic Relations Court. Defendant's counsel was not notified by plaintiff that he was seeking relief from Judge Valentine's order in the Circuit Court. Judge Roush conferred with Judge Valentine and Judge Hudson and denied the Emergency Petition. Judge Roush advised plaintiff that New Hampshire had jurisdiction in this matter. Defendant's counsel was notified by telephone of Judge Roush's ruling. See Calendar Control Form dated January 8, 2001.

Aside from Petitioner's motions for emergency relief, no other motion for modification of custody

has been filed in this Circuit Court. (Bold emphasis added.)

The Clerk is requested to send copies of this certification to the Petitioner pro se and to counsel for the Defendant.

Respectfully submitted this 7th day of March 2001.

_____/s/_____
Henry E. Hudson, Judge

_____/s/_____
Jane Marum Roush, Judge